

SUBJECT: Arrests	NUMBER: 2-3.02
EFFECTIVE DATE:	REVIEW DATE:
NMMLEPSC STANDARDS: ADM.02.04, ADM.02.05, OPR.12.03	APPROVED: Sheriff

I. POLICY

Short of the application of force, an arrest is the most serious action a deputy can undertake. An arrest can cause repercussions throughout a person's life, even if he or she is eventually found not guilty or never brought to trial. The most important legal question facing a deputy at the moment of an arrest is the existence of probable cause. Without probable cause the arrest is illegal and the evidence of criminality that was obtained because of the arrest is inadmissible. Deputies shall accordingly exercise critical judgment in making arrests. Critical judgment includes consideration for bystanders, the time, place, and location of offenses, and the use of force in making the arrests. Deputies shall consider alternatives to arrest consistent with their law enforcement mission.

II. DEFINITIONS

- A. Arrest: An arrest is a seizure of a person. An arrest is supported by probable cause. Generally, according to Fourth Amendment cases, the test of whether an arrest has taken place is whether a reasonable person under the circumstances would have felt free to leave.
- B. Probable cause: According to the Supreme Court, "probable cause exists where the facts and circumstances within their [the arresting deputy's] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been or is being committed" and that the person to be arrested committed it.
 - 1. A deputy must have probable cause to make an arrest.
 - 2. The aim of probable cause is to make a formal charge. When a deputy has probable cause, he or she may undertake a complete body search; record the suspect's fingerprints, take the suspect's photograph, and jail him.

III. DISCRETION

- A. Deputies, by the nature of their job, are required to exercise discretion in the performance of their duties. The department provides deputies with written policies, rules, departmental orders, directed patrol assignments, and training in order to aid them in making decisions which govern discretion in performing their duties.

- B. With the exception of rules and regulations, general orders (SOP) give deputies procedures to follow for common or critical enforcement tasks. By definition, general orders afford deputies a window of discretion within which to act. General orders are to be followed unless unusual or extreme circumstances dictate another course of action. In this case, deputies shall make reasoned decisions in their discretion based on good judgment, experience, and training. It is up to the individual deputy to consider the relevant facts, the situation, and then, using knowledge, training, and good judgment, make appropriate decisions. Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.
- C. Deputies shall not make arrests based on or affected by a person's gender, sexual orientation, race, creed, color, general attitude, ethnicity or natural origin.
- D. Deputies have five forms of discretionary authority when making arrests: no arrest at all, an informal resolution of the incident or problem, issuance of a summons, a full-custody arrest or issuance of a criminal citation.
 - 1. Informal resolutions take the form of referrals to other agencies, mediating agreements between two or more parties, or issuance of a warning. Informal resolutions are the least coercive of all enforcement measures and shall be applied when stronger enforcement methods are unnecessary or inappropriate under the circumstances.
 - 2. Issuance of a summons may be requested of the court or decided by the judge upon review of complaint.
 - 3. Criminal citations may be issued for violations in accordance with NMSA 31-1-6.
- E. The decision to apply one or more enforcement methods must account for the totality of the circumstances and must be consistently applied.
- F. Supervisors shall review each arrest report to ensure that proper action was taken under the circumstances.

IV. ARRESTS WITH A WARRANT

- A. Who may issue: An arrest warrant may be issued by any municipal, magistrate, or district judge, probation office, or juvenile and domestic relations court who has jurisdiction for the case.
- B. Issuance of a summons instead of warrant: Court rule 5-208 provides for issuance of a summons instead of a warrant. Summonses impose the same requirements to appear at an appointed place and time as with a warrant.
- C. Issuance and service of summons in place of warrants in misdemeanor cases.

1. Deputies may request that the court issue summonses for offenses committed in their presence when the offenses violate county ordinances.
2. Any person refusing to give a written promise to appear under the provisions of this section shall be taken without unnecessary delay by the arresting deputy before a magistrate or other appropriate issuing authority.

D. Copy of process to be left with accused:

Criminal procedures require that in most circumstances the deputy shall leave a copy of the criminal process with the person charged.

E. Execution of arrest warrants:

1. NMSA 31-1-4 authorizes a law enforcement officer to execute within his jurisdiction a district or magistrate warrant, or summons issued anywhere in New Mexico. Municipal court actions may be served within the court's jurisdiction, except for DWI actions which may be served anywhere in New Mexico.
2. NMSA 31-1-5 requires a deputy who arrests a person on a warrant from another jurisdiction to take the arrestee without unnecessary delay to an appropriate judicial officer serving our locality.

F. Escape, flight, and pursuit: Arrest anywhere in the state:

1. NMSA 29-1-4 allows a deputy, with or without a warrant, to pursue within his jurisdiction an escapee from custody. If the deputy is in close pursuit, he or she may arrest the suspect wherever he is found.
2. If the arrest is made in an adjacent county or city than the one from which the suspect fled, then the deputy shall deliver him or her to the judicial authority of local jurisdiction.
3. NMSA 31-2-1 authorizes a law enforcement officer from any other state or the District of Columbia to pursue a fleeing felon into New Mexico and take the suspect into custody as if the suspect had committed a felony in New Mexico. Foreign officers shall without unnecessary delay take the arrestee to a local magistrate judge to determine the lawfulness of the arrest as required in NMSA 31-2-2.
4. NMSA 31-2-8 authorizes a Valencia County deputy whose jurisdictional boundary while in fresh pursuit of a misdemeanor whom he would otherwise have authority to arrest shall have the authority to arrest that misdemeanor anywhere within the state and return him to the jurisdiction in which the fresh pursuit began without further judicial process.

G. Arrest of suspect inside dwelling:

A deputy with an arrest warrant may search for the defendant in his or her own home provided that the warrant was valid; the deputy searches the defendant's home (and not someone else's); and probable cause exists that the defendant is home at the time of the search. The search for the defendant must be limited to places where he or she might be found.

H. Return of warrant:

Upon executing the warrant the arresting deputy shall note the date of execution on it then return it to the court less copies given to the arrested person.

V. ARREST WITHOUT A WARRANT

A. Authority:

As noted earlier, the search and seizure provision of the Fourth Amendment protects citizens from the arbitrary and oppressive interference by law enforcement officials with regard to privacy. Further, deputies must have probable cause that a crime has been committed, and that the person to be arrested has committed the crime.

B. When warrantless arrests may be made:

1. when a person commits any crime in the deputy's presence;
2. when the deputy has reasonable grounds or probable cause to suspect any person of having committed a felony not in his presence when exigent circumstances exists;
3. at the scene of any motor vehicle crash when the deputy has reasonable grounds to believe, upon personal investigation, that a crime was committed by any person in their presence (66-8-125 NMSA);
4. at the scene of a domestic disturbance and has probable cause to believe that a crime was committed (31-1-7 NMSA);
5. at any hospital or medical facility to which any person involved in a motor vehicle crash has been transported, provided the deputy has reasonable grounds to believe, based upon personal investigation, that a crime has been committed by that person;
6. on a highway when charged with a theft of a motor vehicle; (66-8-125 NMSA)
7. when any person is charged with a crime in another jurisdiction and the deputy has received:
 - a) a photocopy of a warrant;
 - b) a telegram;
 - c) a computer or facsimile printout; or

- d) a radio, telephone or teletype message which gives the name or a reasonably accurate description of the wanted person and the crime alleged;
- 8. when the deputy investigates the crimes of assault, battery, public affray, or criminal damage in a licensed liquor establishment and has probable cause to believe a crime was committed (30-3-6 NMSA);
- 9. when the deputy has probable cause based upon a reasonable complaint of a misdemeanor not committed in the deputy's presence involving shoplifting, or falsely obtaining services or accommodations, (30-16-23, 30-16-16 NMSA).
- 10. Under NMSA 31-1-7, deputies may arrest without a warrant in cases of assault and battery against a family or household member and NMSA 40-13-6 for violations of protective orders, regardless of whether the violation occurred in the deputy's presence, provided the deputy has probable cause. See VCSO Policy 2-6, domestic violence.

C. Actions upon arrest from charges filed in another jurisdiction:

- 1. Upon arrest based on a photocopy of the warrant, telegram, computer or facsimile printout, or teletype message, the arresting deputy shall serve a copy of the document on the accused.
- 2. The arresting deputy shall bring the accused before the magistrate for arraignment. 35-5-1 NMSA.
- 3. The magistrate shall conduct a bail hearing and set bail, or secure bond, if appropriate just as if the accused had been arrested on the warrant. The deputy shall not request the issuance of any arrest process such as duplicate warrants or fugitive warrants based on the charge in the other jurisdiction within New Mexico.
- 4. The arresting deputy shall contact the law enforcement officials where the charge was made and inform them that the accused has been arrested on the teletype message (or other arrest document), and if not bonded, ascertain when a representative will arrive to transfer the accused back to the locality having trial jurisdiction.
- 5. NMSA 31-4-14 fugitive from justice - Arrest of a person may be made without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed. A complaint must be made against the accused under oath setting forth the grounds for arrest.

D. Juveniles:

Refer to VCSO Policy 2-13 concerning handling of juveniles.

E. Criminal citations:

1. Per NMSA 3 1-1-6, an arresting deputy may issue a citation to appear at a time and place specified in such citation whenever any person is detained by or in the custody of an arresting deputy for:
 - a) Any offense committed in the deputy's presence which is a violation of any county, city ordinance, or for any petty misdemeanor offense.
2. If, after issuing a citation for (a) above, the suspect continues the unlawful act, then the deputy shall without unnecessary delay take him or her before the appropriate judge.
3. If the deputy believes that the suspect is likely to disregard a citation, or may cause harm to himself or another person, then the deputy shall without unnecessary delay take him or her before the appropriate judge.
4. An NCIC check on any person to whom a citation will be issued will be completed before releasing him or her. In the event the NCIC check reveals a valid extraditable warrant the criminal citation shall not be issued and a physical arrest will be made on all charges.

VI. POST-ARREST PROCEDURES

A. Constitutional considerations

Refer to VCSO Policy 2-1 for a discussion of search guidelines and searches incident to arrest.

B. Releases on citations and mandatory arrest

If the arrested person is not released on a citation or is charged with a felony, deputies shall observe the following procedures:

1. Transport the suspect to the jail and begin booking process. Obtain case number from communications operator to be placed on the offense/incident report.
2. Obtain state tracking number (STN) to be attached to fingerprint cards, booking sheet, criminal complaints, and probable cause statement.
3. Complete a criminal complaint and probable cause statement for each adult charge. (multiple charges may be on same form) magistrate court requires the following paperwork:

Criminal complaint and probable cause statement and/or copy of the warrant.

4. The deputy needs to provide defendant with a copy of the criminal complaint or

warrant and be advised of his bond which shall be set by the bond schedule provided by the appropriate court.

5. Subject is released to the appropriate detention facility.
6. The criminal complaint and probable cause statement must be submitted to the appropriate court during the next court business day to ensure compliance with the 48 hour arraignment rule.
7. If the court or the district attorney's office rejects the criminal complaint and probable cause statement and it is returned via the records department, the criminal complaint and probable cause statement is returned to the deputy for immediate correction and resubmission, with copies to his/her immediate supervisor and/or the field service supervisor who will ensure the criminal complaints are corrected and resubmitted in a timely manner.

In the event the deputy is on days off or leave, he/she will be called in to make the corrections and resubmit the amended criminal complaint and probable cause statement. The field service supervisor shall submit the amended criminal complaint to the court on behalf of the deputy on the same day they are corrected by the deputy.

8. If the charges filled require that the criminal complaint and probable cause statement be submitted to the district attorney's office for review, the deputy shall submit a copy to the district attorney's office and all original criminal complaints and probable cause statements shall still be submitted to the appropriate court.

C. Injury before or during arrest

If a person receives an injury before or during an arrest and either requests medical attention or, in the deputy's judgment, medical attention is needed, deputies shall transport the suspect or arrange for his or her transportation to the hospital for an examination before booking.

D. Processing of paperwork

1. Offense/Incident reports

- a) Must be completed by the deputy prior to the conclusion of their shift, unless approved by a supervisor.
- b) The report will be reviewed and approved by a supervisor. Supervisor's will approve all reports in a timely manner.

2. Arrest/booking forms

- a) Must be completed by the deputy when defendant is arrested.
- b) Supervisor will approve and turn into records division.

- c) Records will send one copy to the appropriate court and the final copy will be placed in a permanent file.
- 3. Copies of warrant
 - a) Once the defendant has been arrested and booked into the detention facility the deputy shall provide the defendant a copy of the warrant.
 - b) The deputy shall provide the detention facility a copy of the warrant.
 - c) The deputy shall turn in a copy of the warrant to the supervisor.
 - d) The deputy shall return the signed original warrant to the communications operator who will return it to the appropriate court.
 - e) The supervisor will forward the copy of the warrant to the records division.
 - f) The records division will place the copy of the warrant into the permanent file.
 - g) In the case of juvenile offenders see VCSO Policy 2-10

4. Out of state warrant arrest

When an arrest is made on a warrant that is outside the State of New Mexico the deputy must complete a fugitive complaint form. The fugitive complaint along with a copy of the out of state warrant will be left with the detention center. A copy of the fugitive complaint and warrant will be filed with the incident report.

E. Further processing

Items seized as evidence shall be tagged and turned in to the departmental evidence locker.

VII. RELEASE FROM ARREST

A. Legal background:

Deputies may encounter a circumstance where probable cause develops to arrest a person for an offense, only to find out shortly thereafter that the person under arrest did not commit a crime, or that the event was not a crime. It is imperative, then, that the deputy ends the arrest process immediately to avoid becoming liable for false imprisonment.

B. Procedure:

1. If the arresting deputy determines that probable cause no longer exists to arrest a suspect, and the deputy is satisfied that the person under arrest either did not commit the crime or that the crime did not occur, then the deputy shall notify his supervisor immediately.
2. The supervisor will report the incident to a command level supervisor.
3. The District Attorney's Office will be notified as soon as possible.

4. The defendant will be released on own recognizance with the authority of the judge.
5. The District Attorney's Office and the deputy will prepare notice of dismissal paperwork.
6. When a deputy releases a subject from arrest, he or she shall return the person to the place of the arrest. The deputy shall not release the person along the roadside. If a vehicle has been towed, the vehicle shall be returned to the operator/registered owner.
7. To protect him/herself and the department, the deputy shall document in an incident report all of the following:
 - a) the date and time of arrest;
 - b) the person arrested (name, address, date of birth, race);
 - c) the location of arrest;
 - d) the location and time of release from arrest and whether the person was transported;
 - e) the reasons or discovery of information which led the deputy to release from arrest;
 - f) any witnesses to the alleged crime, or to the fact the person arrested was allegedly involved.
8. If the deputy makes an arrest based on probable cause, the arrest is lawful. Probable cause must continue to exist through the appearance of the deputy and arrested person before the magistrate. If not, the defendant must be released as soon as practicable.

VIII. ALTERNATIVES TO ARREST

- A. Under certain circumstances, deputies are faced with situations where an arrest and pre-arraignment confinement will not be possible. In such cases, deputies may elect to exercise certain alternatives such as the issuance of summonses, referral to a social service agency, or simply to give a warning. Examples:
 1. Mentally or emotionally disturbed persons.
 2. Domestic situations where counseling may be appropriate except where probable cause requires an arrest.
 3. Juvenile offenders.
 4. Transient persons who need shelter and food.
 5. Certain misdemeanor cases.
- B. Authority to issue summonses in lieu of arrest/confinement:

1. *NMSA 31-1-6* authorizes law enforcement officers to issue a citation in lieu of arrest for persons charged with a petty-misdemeanor criminal offense. Additionally, NMSA authorizes the use of citations when enforcing Game and Fish violations found in Chapter 17 NMSA.
2. In determining whether a citation should be used, the deputy shall:
 - a) decide whether the offense committed is serious.
 - b) make a judgment as to whether the accused poses a danger to the public or himself.
 - c) decide, based on circumstances, whether the person may disregard a citation.

C. Informal handling of criminal matters:

Deputies often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations. When in the judgment of the deputy a better solution to the problem will be achieved by use of alternatives to enforcement, he or she should refer the individual to a social services agency.

D. Use of warnings as an alternative to arrest:

The use of warnings may sometimes provide a solution to a problem and may enhance the public perception of the department. Normally, the use of a warning occurs in traffic offenses, but occasionally may be applied to criminal offenses. In determining if a warning should be issued, the deputy shall consider:

1. the seriousness of the offense;
2. the likelihood that the violator will heed the warning;
3. the reputation of the violator, i.e., known repeat offender, has received previous warnings, etc.

IX IMMUNITY FROM ARREST

A. Legislative immunity

1. Members of the United States Congress are exempt from arrest when Congress is in session, or when they are en route to or from congressional business, except for traffic summonses. {Article I, Section 6, U.S. Constitution}
2. Members of the New Mexico Legislature are exempt from arrest during a legislative session except in cases of treason, a felony, or a breach of the peace. {Article IV Section 13, Constitution of New Mexico}

B. Diplomatic immunity:

1. Upon exhibiting proof of diplomatic immunity, persons shall be released upon being stopped for a misdemeanor traffic violation. If questions arise about this procedure,

or if an arrest for a felony is necessary, call and advise the U.S. State Department Office of Security {202-673-3881, days, or 202-647-2412, nights and weekends}.

2. While a person claiming diplomatic immunity may present any number of identification papers, the only one that is indicative of the level of privilege and immunity is a card issued by the U.S. State Department. The holder's level of immunity will be indicated on the card. If a person claiming immunity does not possess this card and the incident involves a criminal offense, deputies may detain the person either at the scene or at the department long enough to verify official status.
3. When encountering a criminal suspect who claims diplomatic immunity, deputies shall first take reasonable measures—including pat-downs or other legal searches—to ensure safety to the public or other deputies. Verification of the diplomatic claim shall take place after a danger has been neutralized. A criminal investigation shall proceed as if no valid diplomatic immunity claim has been made. Interviews, interrogations, seizures of evidence, or issuance of warrants shall proceed per departmental procedure. In a criminal investigation, the Sheriff shall remain in contact with the State Department.
4. Regardless of the claim of immunity, in any case where deputies arrest or detain foreign nationals, the suspects shall be advised of their right to have their consular officials notified. Consular officials have a right to access foreign nationals in detention and to provide consular assistance. In some cases, this notification is mandatory Note: the list of countries which require mandatory notification of consular officials in the event that one of their citizens has been arrested is extensive. The State Department shall be contacted for guidance.
5. Upon detaining any foreign national with diplomatic immunity, the State Department will be notified. This includes death of a minor or adult, or a foreign national who is incompetent, or a foreign national who required assistance.
6. The on duty supervisor is responsible for any contact with the State Department or a consular official. This contact will be documented in the incident report.